

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Pat. # 6,797,291⁸²

SODA Feed Ingredients, LLC, a)
Minnesota limited liability company,)
Plaintiff,) Civil Action No. _____
-vs-)
Balchem Corporation,) JURY TRIAL DEMANDED
Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff SODA Feed Ingredients, LLC ("SODA"), by its undersigned counsel, Leonard, Street and Deinard, for its Complaint against Defendant Balchem Corporation ("Balchem"), seeking a declaration of rights relating to a certain patent, states and avers as follows:

NATURE OF THIS ACTION

1. This is an action for a Declaratory Judgment that a certain United States patent, described more fully below, has not been and is not infringed by any act of Plaintiff, and that each of such claims asserted in said patent is invalid.
2. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and is relating to the application of the Patent laws of the Untied States, Title 35 of the United States Code, 35 U.S.C. §§ 271 ff.

**SECOND CLAIM FOR RELIEF
INVALIDITY OF THE '291 PATENT**

28. Plaintiff restates and incorporates the averments of Paragraphs 1-27, above.

29. By its written correspondence and other competitive dealings described above, Defendant, through agents, unequivocally have accused Plaintiff of infringing the '291 Patent. Defendant has demanded that Plaintiff cease and desist from the alleged current infringement and, further, give written assurances for the same.

30. Plaintiff is not liable to Defendant based on the '291 Patent because the '291 Patent is, upon information and belief, invalid for failure to comply with the requirements of the Patent Laws of the United States, including at least 35 U.S.C. §§ 102, 103, and 112.

31. By virtue of Defendant's express charge of infringement against SODA and its customers evidenced in the communications sent from Balchem to SODA in Minnesota and other threatening acts, and in light of the fact that these two companies are each vying for the business of some common identified customers in Minnesota and elsewhere, there is an actual and justiciable controversy between Plaintiff and Defendant as to validity of the '291 Patent that is ready for adjudication.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court enter judgment:

- A. Declaring that Plaintiff has not infringed and is not infringing any claim of the '291 Patent;
- B. Declaring that any claims of the '291 Patent asserted by Defendant in this action are invalid and unenforceable;

- C. Awarding Plaintiff its costs and disbursements in this action;
- D. Declaring, upon a proper showing made against Defendant, this to be an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorney's fees; and
- E. Granting Plaintiff such other relief as is just and proper.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a trial by jury on any or all issues joined by the pleadings and triable by a jury.

Dated: April 14, 2009

Kevin D. Conneely
Kevin D. Conneely (ID #192703)
kevin.conneely@leonard.com
LEONARD, STREET AND DEINARD
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Telephone: 612.335.1500
Facsimile: 612.335.1657

ATTORNEYS FOR PLAINTIFF
SODA FEED INGREDIENTS, LLC

THE PARTIES

3. SODA is a limited liability company organized and existing under the laws of the State of Minnesota, and its principal place of business is located in Mankato, Minnesota.

4. Defendant Balchem is, upon information and belief, a corporation with various corporate subsidiaries organized under the laws of the state of Maryland and Delaware, with its principal place of business located in New Hampton, New York.

JURISDICTION AND VENUE

5. This Court has original and exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. As described more fully below, this Court has personal jurisdiction over Defendant under the Minnesota Long Arm Statute, Minn. Stat. § 543.19. Without limiting their further supporting averments below, on information and belief, Defendant has purposefully availed itself of the Minnesota jurisdiction by corresponding prior to suit with Plaintiff's agent in this state about the very subject of the patent in suit; and participating in sales of encapsulated feed products to several companies with headquarters and significant operations in Minnesota, which sales are regular and continuous, not merely *de minimis*, and believed to be in excess of \$1 million annually.

7. Balchem has, on SODA's information and belief, communicated directly with such Minnesota-based companies and made statements in a commercial context relating to the patent in suit and to Plaintiff SODA. Without limiting the foregoing general averment, on information and belief, during a presentation to Ridley's Minnesota facilities in late 2008, Balchem sales representatives made statements about

SODA's Lys 50 product and suggested that Balchem had patent rights covering the lysine bypass dairy application. Balchem stated that others who used such products would be in violation of the Balchem patent rights.

8. As described more fully elsewhere in these averments, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Balchem has directed both its commercial efforts relating to encapsulated feed products and its enforcement of purported patent rights at non-parties and at Plaintiff (through its legal representative) located in Minnesota. Further, SODA currently does all of its business from its sole office in Mankato, Minnesota. All of the activity (importing, selling, and offering for sale) that Balchem has cast as infringement in the United States is conducted from SODA's Mankato, Minnesota headquarters. Currently, any sales of allegedly infringing encapsulated feed products by SODA in the United States will originate in and be conducted through SODA's Mankato offices.

9. At the same time, a substantial portion of the buyers in the market in which the parties compete have their U.S. headquarters in Minnesota. Examples of the largest customers for encapsulated feed products, to whom SODA is actively selling or from whom SODA is actively seeking orders include: Cargill, Land O'Lakes/Purina, and Ridley, Inc. (d/b/a Hubbard Feeds). Thus, the conduct, or at least a substantial portion of the conduct, over which Plaintiff seeks a declaration of rights have occurred in, affect, or relate to Minnesota.

BACKGROUND AND ALLEGATIONS

10. On September 28, 2004, United States Patent No. 6,797,291 B2, entitled "Stable Hygroscopic Compositions and Methods For Stabilizing Hygroscopic Ingredients" (the "291 Patent") issued with the named inventor listed as Paul H. Richardson. The '291 Patent issued from an application filed in the United States Patent and Trademark Office on January 9, 2002. On information and belief, the '291 Patent has been further assigned to Defendant or to one of its wholly owned subsidiaries, but Plaintiff is unaware whether said assignments is valid or whether Defendant has further assigned the same. A copy of the '291 Patent is attached as *Exhibit A* to this Complaint.

11. Balchem is a large, publicly-traded corporation with nationwide distribution of a variety of products, generally organized into three business segments: ARC Specialty Products; Food, Pharma and Nutrition; and Animal Nutrition and Health. In the United States, Balchem has three other production facilities and a New York corporate headquarters. The Animal Nutrition and Health division operates, on information and belief, mainly from a plant in Missouri, where it produces agricultural feed additives in encapsulated form. One of Balchem main agricultural supplement products, touted on its website, is REASHURE® Choline, an encapsulated choline additive that is offered for sale throughout the United States. Balchem markets REASHURE® Choline as an encapsulated choline product, which is described as capable of improving health and production in transition and early lactating dairy cows. Balchem also markets NITROSHURE™, an encapsulated urea supplement, and NIASHURE™, a microencapsulated niacin product.

12. It is estimated by SODA, on information and belief, that in the area of encapsulated feed additives, Balchem has held a majority share of the domestic U.S. market for encapsulated feed additives and components, such as those described in the '291 Patent.

13. SODA is engaged in the development, manufacture, importation, and sale of, among other products, encapsulated feed additives that are useful in feed compositions in the field of animal nutrition. Livestock have a four-chamber stomach, including a first chamber called the "rumen," and are therefore sometimes referred to as ruminants. Such encapsulated feed additive products can be used to protect a particular vitamin or amino acid additive (for relevant examples, choline or lysine) from the digestive action otherwise imparted in the rumen and other digestive anatomy of livestock.

14. Through its own established distribution channels, SODA's encapsulated choline feed additive products are being offered for sale in Minnesota and throughout the United States. In Minnesota, where SODA is headquartered, SODA hereby avers, on information and belief, that Balchem has continuously offered for sale to Minnesota-based customers, Balchem's own competing line of encapsulated feed additive products, described more fully herein. For example, Minnesota-based companies such as: Land-O-Lakes/Purina Feeds LLC (headquartered in Saint Paul, Minnesota), Cargill (headquartered in Wayzata, Minnesota), and Ridley, Inc., (whose U.S. headquarters are in Mankato d/b/a Hubbard Feeds) are also customers being targeted by SODA for sales of its own encapsulated choline feed supplement products. SODA estimates, on information and belief, that three companies represent approximately 40% of the overall

domestic rumen nutrition market. SODA's ability to compete for current and future sales to such companies as those described above will be affected by a continuing charge of infringement from Balchem on the '291 Patent.

15. SODA's indirect corporate affiliates, or their predecessors, have operated a production plant in Italy where encapsulated feed products have been made and sold for over many years. This same plant has been making an encapsulated feed additive since approximately 1983. Such products have been marketed and sold in the United States for many years before Defendant's asserted patent ever issued and more than one year before the application that lead to the '291 Patent. Upon information and belief, an immediate corporate predecessor of Defendant (DuCoa L.P.) had submitted purchase orders as early as 1997 for a particular encapsulated choline product made at this very same plant.

16. More recently, from its headquarters in Mankato, Minnesota, SODA has begun recently to offer for sale a particular type of encapsulated feed product that can be used, depending on the application desired and decided upon at the discretion of the feed mixing supplier or the end user, as a feed additive for livestock animals with a four-chamber stomach that includes a rumen, such as cattle. Beginning in 2009, SODA has begun marketing and selling its encapsulated choline product throughout the United States, including specifically in Minnesota.

17. Based on SODA's own sales activity for choline and other encapsulated feed products in competition with Balchem's REASHURE® Choline and other encapsulated feed products, and based on the string of warning letters and letter

responses identified herein specifically regarding the '291 Patent, there is a real case or controversy ripe for adjudication.

18. Beginning in or about September, 2008, Defendant began a series of regular contacts sent to SODA's supplier and SODA's Minnesota legal agent setting out Balchem's direct allegations of infringement by Plaintiff of the '291 Patent now in suit. Such letters from Defendant included specifically that Plaintiff cease and desist from further sales of any encapsulated feed additive products.

19. For example, in a letter sent from Balchem dated September 25, 2008, Balchem claimed ownership of the '291 Patent, generally accused unspecified products/process of SODA of infringing that patent, and demanded a response as to why SODA was continuing to sell in light of the claims of infringement being made. No claim chart addressed to the '291 Patent and no technical details addressed to the unidentified accused encapsulated feed products were provided in that letter, just the allegation of infringement.

20. Through its Minnesota legal counsel, SODA responded to the Balchem assertions above in a letter dated December 12, 2008, addressed to Mr. Matthew Houston, General Counsel of Balchem. In that letter, Plaintiff denied the infringement allegations and called into question the validity of the '291 Patent. Further, that response to Balchem questioned the premise for the manner in which Balchem came to own the '291 Patent in the first place. The letter states, in part, "Your client must both withdraw your infringement allegations and explain its conduct as it relates to SODA's proprietary business information," and later asserts, "We do not see how there can be any infringement of any valid or enforceable claims of the '291 patent."

21. More recently, as a response to the December 12, 2008, letter from SODA's counsel, outside legal counsel acting for Balchem sent a letter dated February 26, 2009, to SODA's counsel in Minnesota and repeated the unequivocal assertion of infringement of the '291 Patent by SODA's manufacture and sale of encapsulated choline feed products. Balchem suggested that it had tested some unidentified SODA encapsulated product for certain physical properties, but Balchem's letter failed to provide any testing protocols or specific results or other data on which the allegations of infringement were being based. Balchem's counsel's letter also charged that SODA's feed ingredient customers are themselves directly infringing the '291 Patent and that SODA carries on the alleged infringement: by inducing infringement by SODA's customers; and by directing or controlling the uses to which such customers put the SODA encapsulated feed products. Finally, Balchem alleged in that letter that SODA's encapsulated feed products as sold have no non-infringing commercial uses.

22. This most recent February 26th letter from Balchem to SODA maintained Balchem's ownership of the '291 Patent. Balchem maintained the patent's validity and ignored SODA's prior documentation of encapsulated choline product sales that predate the filing date of the application for the '291 Patent by more than one year. The Balchem letter closes as follows: "Balchem continues to demand that your client discontinue its infringement of Balchem's '291 Patent and we ask to be provided with written evidence thereof upon our request. Be further advised that in the event of continued infringement by SODA, we will have no alternative but to seek redress in court of law."

23. Plaintiff continues to deny that any basis exists for liability to Defendant on the claims of infringement, either as stated in the above correspondence or otherwise. Further, on information and belief, one or more claims asserted in the patents in suit are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, Section 101 ff. Accordingly, SODA has refused to give in to Defendant's request for ceasing and desisting from selling its own competing encapsulated supplement products and hereby seeks a declaration of its rights.

**FIRST CLAIM FOR RELIEF
NON-INFRINGEMENT OF THE '291 PATENT**

24. Plaintiff restates and incorporates the averments of Paragraphs 1-23, above.

25. By its written correspondence and other competitive dealings described above, Defendant, through agents, unequivocally has accused Plaintiff of infringing the '291 Patent. Defendant has demanded that Plaintiff cease and desist from the current alleged infringement and, further, give written assurances for the same.

26. Plaintiff denies that it has infringed or is infringing the '291 Patent.

27. By virtue of Defendant's express charge of infringement against SODA and its customers evidenced in the communications sent from Balchem to SODA in Minnesota and other threatening acts, and in light of the fact that these two companies are each vying for the business of some common identified customers in Minnesota and elsewhere, there is an actual and justiciable controversy between Plaintiff and Defendant as to the contested infringement of the '291 Patent that is ready for adjudication.